

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE T. MOSES,

Defendant-Appellant.

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UNPUBLISHED  
February 14, 2003

No. 235912  
Wayne Circuit Court  
LC No. 00-012132-01

Before: Murphy, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), and possession of a firearm during commission of a felony, MCL 750.227b. He was also convicted by the trial court of an additional charge of felon in possession of a firearm, MCL 750.224f. Defendant was sentenced to concurrent prison terms of one to twenty years for the possession with intent to deliver conviction, and five months to five years for the felon in possession conviction, to be served consecutive to a two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

This case arises from a police raid on a residence in which police officers indicated that they found cocaine and firearms in the basement of the residence. The prosecution theory was that defendant possessed these items, which were found in a basement area that police officers indicated was set up as a bedroom. The defense presented witnesses who testified that the basement area was not used as a bedroom and did not have a bed.

Defendant argues that there was insufficient evidence to support each of his three convictions. We disagree. In reviewing the sufficiency of the evidence to support a conviction, we view the evidence in a light most favorable to the prosecution to decide whether a rational factfinder could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). Further, circumstantial evidence and reasonable inferences from the evidence may be satisfactory proof of the elements of a crime. *People v Greenwood*, 209 Mich App 470, 472; 531 NW2d 771 (1995). Because defendant was convicted of the felon in possession charge at a separate trial, we consider only the evidence presented at that trial in evaluating the sufficiency of the evidence to support that conviction. Likewise, because defendant was convicted of the possession with

intent to deliver cocaine and felony-firearm charges at his second trial, we consider only the evidence presented at that second trial in evaluating the sufficiency of the evidence to support those convictions.

By its plain language, the felon in possession of a firearm statute, MCL 750.224f, provides that it is a felony for a person previously convicted of a felony to possess a firearm under certain circumstances. Defendant does not contest that he was a convicted felon subject to this statutory ban on possession of a firearm at the pertinent time. Rather, he attacks the sufficiency of the evidence to support a conclusion that he possessed a firearm at the relevant time. Possession of a firearm may be either actual or constructive, with a defendant having constructive possession of a firearm “if the location of the weapon is known and it is reasonably accessible to the defendant.” *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000), quoting *People v Hill*, 433 Mich 464, 470-471; 446 NW2d 140 (1989). At the first trial, Officer Glover testified that defendant was the only male in the pertinent residence on the day that the police executed a search warrant there, and that defendant told him that he slept in the basement of the residence. Officer Glover also testified that there was a bedroom at the foot of the stairs to the basement. He stated that he found a shotgun underneath the bed in the basement, a handgun on top of the entertainment center in that room, and an assault rifle in a closet to the right of the bed. He also said that there was men’s clothing, but no women’s clothing, in the basement. Viewing this evidence in a light most favorable to the prosecution, a rational factfinder could determine beyond a reasonable doubt that this was defendant’s bedroom. From the presence of the weapons in the room – including one out in the open on an entertainment center – a reasonable factfinder could conclude beyond a reasonable doubt that defendant knew the location of, and had unrestricted access to, one or more of the firearms. Accordingly, there was sufficient evidence of defendant’s possession of a firearm to support the possession element of felon in possession of a firearm.

The crime of possession with intent to deliver cocaine requires that “the defendant must have knowingly possessed a controlled substance, intended to deliver that substance to someone else, and the substance possessed must have actually been cocaine and defendant must have known it was cocaine.” *People v Johnson*, 466 Mich 491, 499-500; 647 NW2d 480 (2002). Actual physical possession of the cocaine is unnecessary to support such a conviction; “constructive possession will suffice.” *Id.* at 500. Constructive possession exists “when the totality of the circumstances indicates a sufficient nexus between defendant and the contraband.” *Id.* In this regard, “[t]he essential question is whether the defendant had dominion or control over the controlled substance.” *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). At defendant’s second trial, Officer Brown testified that, during surveillance of the pertinent residence on the day of the raid, he observed, with the use of binoculars, three separate people arrive in a vehicle, whereupon they were met at the door by defendant. Defendant then took money from them, left, and came back to the front door after “[a]nywhere from one to three minutes” and gave each of them what Officer Brown believed to be narcotics. Officers Brown and Glover testified that defendant was the only male in the residence when the police executed the search warrant. Officer Glover also testified that he asked defendant where he slept, that defendant told him that he slept in the basement, and that there was men’s clothing in the basement. Additionally, Officer Glover said there was a bed at the foot of the stairs in the

basement and an entertainment center. Accordingly, there was sufficient evidence to support a finding that defendant used this basement area as his bedroom.

Officer Reynord Reed testified that he found “seven ziplocks of suspected cocaine” underneath the VCR in the entertainment center in the basement and that the suspected cocaine was placed in “lock seal folder number 473840.” Officer Reed said that the packaging of the suspected cocaine was consistent with how drugs appear when they are being sold. The parties stipulated that an expert witness would, if called to testify, state that “sealed evidence envelope 473840” contained .97 grams of cocaine. This supports a finding that the substance was actually cocaine. Further, a rational factfinder could conclude beyond a reasonable doubt that defendant had at least constructive possession of this cocaine. The location of the cocaine in defendant’s bedroom, particularly in the entertainment center as opposed to a highly concealed area, supports a conclusion that defendant knew the cocaine was there and, accordingly, had dominion and control over it. Additionally, the testimony about the cocaine being packaged in a manner consistent with being prepared for sale and about defendant’s involvement in what appeared to be narcotics sales with three people prior to the police raid, support a conclusion that defendant knew the substance was actually cocaine and that he intended to deliver some or all of this cocaine to others. Thus, there was sufficient evidence to support defendant’s conviction of possession with intent to deliver cocaine.<sup>1</sup>

Felony-firearm consists of the possession of a firearm during the commission of, or attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). As discussed above, the evidence at defendant’s second trial indicated that the pertinent area in the basement was used by defendant as his bedroom. Substantially the same as his testimony at defendant’s first trial, Officer Glover testified at defendant’s second trial that, in the basement, he found a handgun on top of the entertainment center, a shotgun under the bed, and an assault rifle in “a makeshift closet to the right of the bed.” Accordingly, as at the first trial, there was sufficient evidence to support a finding that defendant possessed one or more of these firearms. Because these items were found in the same room as the cocaine underlying defendant’s conviction of possession with intent to deliver cocaine, the evidence, viewed in a light most favorable to the prosecution, was also sufficient evidence to allow a rational factfinder to

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<sup>1</sup> Contrary to defendant’s argument, the present case is distinguishable from *People v Simpson*, 104 Mich App 731; 305 NW2d 249 (1980), and *People v Lewis*, 178 Mich App 464; 444 NW2d 194 (1989), in which this Court found insufficient evidence to support drug possession convictions. In *Simpson*, the heroin at issue was seized in a back room of a house and the evidence merely indicated that the defendant had handled some items in that room. *Simpson*, *supra* at 733-734. In contrast, the evidence in this case supports a conclusion that the cocaine was found in defendant’s own bedroom, an area under his general control. Further, unlike in *Simpson*, where the defendant arrived on the scene after the police search, *id.* at 733, there was testimony here that defendant engaged in conduct indicative of drug dealing prior to the raid in which the cocaine was found. Similarly, the cocaine at issue in *Lewis* was found on the dining room table in a house to which people other than the defendant had access. *Lewis*, *supra* at 467, 469. The cocaine in the present case was not found in a common area of the house, but rather was found in an area that could reasonably have been found to be defendant’s bedroom.

determine beyond a reasonable doubt that defendant possessed one or more of these firearms while he committed the drug possession crime. Thus, there was sufficient evidence to support defendant's felony-firearm conviction.

Affirmed.

/s/ William B. Murphy  
/s/ Mark J. Cavanagh  
/s/ Janet T. Neff